

CODE: 3370

**FILED**

OCT 05 2006

RONALD A. LONGSTIN, JR., CLERK

By: [Signature]  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

WORLD BOTANICAL GARDENS,  
INC., a Nevada corporation,

Plaintiff,

vs.

Case No. CV05-02079

Dept. No. 6

WALTER WAGNER, LINDA  
WAGNER, DAN PERKINS, DAVID  
ADAMS, RON TOLMAN, JACQUE  
TOLMAN, KIM HARRIS, DOUG  
HANSEN, JIM MCBETH, DOES I  
through X, and ROE ENTITIES  
I through X,

Defendants.

ORDER OF CONTEMPT

On August 17, 18, and 21, this Court conducted a trial on the merits and a hearing on the Orders to Show Cause against Defendants Walter Wagner and Dan Perkins for violations of the Preliminary Injunction and the Permanent Injunctions previously entered in this case. Robert W. Story and Robert S. Larsen of Story & Sertic appeared on behalf of Plaintiff World Botanical Gardens, Inc. ("WBGI"). Mark Robinson, Annette Emerson, Preston Michie, Ken Francik, and John Wallace testified for WBGI. Treva J. Hearne of

1 Hager & Hearne appeared on behalf of Defendants Walter Wagner,  
 2 Linda Wagner, Dan Perkins, Dan Hansen, and Dave Adams. Defendants  
 3 Walter Wagner, Dan Perkins, and Doug Hansen appeared and testified  
 4 for Defendants.

5 After considering the testimony, evidence, and arguments of  
 6 the parties on the Orders to Show Cause, this Court now enters its  
 7 Findings of Fact, Conclusions of Law, and Order of Contempt as  
 8 follows:

9 **FINDINGS OF FACT**

10 1. On October 21, 2004, this Court entered a Preliminary  
 11 Injunction against Defendant Walter Wagner and his "agents,  
 12 servants, employees, affiliates, successors, assigns, and those  
 13 persons or entities in active concert or participation with [him]  
 14 who receive actual notice of this Order by personal service,  
 15 facsimile, or otherwise" from the following acts:<sup>1</sup>

16 Interfering with WBGI's business affairs;

17 Informing the WBGI domain name registrar  
 18 or web-host that WBGI does not own the  
 19 <www.wbgi.com> website or from otherwise  
 20 interfering with the WBGI web page;

21 Selling or marketing, directly or  
 22 indirectly, any WBGI shares of stock without  
 23 express written WBGI Board of Directors  
 24 approval.

25 Using the name World Botanical Gardens and  
 26 WBGI's trademarks . . . and the email address  
 27 suffix of <wbgi.com>, or any similar . . .  
 28 email address.

2. On October 22, 2005, WBGI served Defendants Walter Wagner  
 and Dan Perkins with this Court's Order for Preliminary Injunction;  
 and Defendants Walter Wagner and Dan Perkins had actual knowledge

<sup>1</sup> The Court will issue a separate Order and Judgment related to the trial proceedings.

1 of the terms of the Preliminary Injunction no later than October  
2 22, 2005.

3 3. No party appealed the Order for Preliminary Injunction.

4 4. On April 24, 2006, this Court entered a Permanent  
5 Injunction against Defendant Walter Wagner and his "agents,  
6 servants, employees, affiliates, successors, assigns, and those  
7 persons or entities in active concert or participation with him who  
8 receive actual notice of this Order by personal service, facsimile,  
9 or otherwise" from the following acts:

10 Interfering with WBGI's business affairs;

11 Informing the WBGI domain name registrar  
12 or web-host that WBGI does not own the  
13 <www.wbgi.com> website or from otherwise  
interfering with the WBGI web page;

14 Selling or marketing, directly or  
15 indirectly, any WBGI shares of stock without  
express written WBGI Board of Directors  
approval.

16 Using the name World Botanical Gardens and  
17 WBGI's trademarks . . . and the email address  
18 suffix of <wbgi.com>, or any similar . . .  
email address.

19 5. On April 26, 2006, WBGI served Defendants Walter Wagner  
20 and Dan Perkins with this Court's Order for Permanent Injunction;  
21 and Defendants Walter Wagner and Dan Perkins had actual knowledge  
22 of the terms of the Permanent Injunction no later than April 26,  
23 2006.

24 6. No party appealed the Order for Permanent Injunction and  
25 the Order for Permanent Injunction is final and binding.

26 7. Defendants Walter Wagner and Dan Perkins knowingly and  
27 intentionally violated both the Preliminary Injunction and the  
28 Permanent Injunction as follows:

1 a. Defendant Walter Wagner interfered in the business of  
2 WBGI by entering the property of WBGI numerous times  
3 where he trimmed Garden plants without permission and  
4 sprayed Round-Up weed killer on Garden plants without  
5 permission thereby interfering with WBGI's overall Garden  
6 plan, and otherwise engaged in unauthorized activities on  
7 WBGI property.

8 b. Defendant Walter Wagner interfered with the WBGI web page  
9 by informing the domain registrar/web host that ownership  
10 of the WBGI web page was under litigation thereby causing  
11 the domain registrar/web host to place the WBGI web page  
12 "under construction."

13 c. Defendant Walter Wagner filed and recorded, without any  
14 legal justification, a lis pendens on the property of  
15 WBGI and on the property of Dr. Lanny Neel, WBGI's Garden  
16 Director, thereby interfering with WBGI's ability to  
17 develop its property and interfering with WBGI's overall  
18 Garden plan, and interfering with WBGI's efforts to raise  
19 capital through the sale of property to Dr. Neel.

20 d. Defendants Walter Wagner and Dan Perkins directly and  
21 indirectly marketed and sold shares of WBGI stock without  
22 ever informing WBGI's Board of Directors of their  
23 marketing and/or sales of shares of WBGI stock and  
24 without first obtaining permission of any kind from  
25 WBGI's Board of Directors to market and/or sell shares of  
26 WBGI stock thereby depriving WBGI of capital and  
27 knowingly and intentionally defrauding innocent and  
28 unsuspecting investors.

1 i. Defendants Walter Wagner and Dan Perkins directly  
2 marketed and sold shares of WBGI stock by marketing  
3 and selling shares which expressly used "World  
4 Botanical Gardens, Inc." Defendant Walter Wagner  
5 issued certificates of ownership which expressly  
6 used "World Botanical Gardens, Inc." Defendant  
7 Walter Wagner, and in one case his wife Linda  
8 Wagner, personally endorsed checks made out to  
9 "World Botanical Gardens" or "World Botanical  
10 Gardens, Inc." for purchase of those shares and  
11 personally deposited those checks into his own bank  
12 account. Defendant Dan Perkins received a commission  
13 from Defendant Walter Wagner for his role in  
14 marketing and selling the shares in WBGI to the  
15 innocent and unsuspecting investors.

16 ii. Defendants Walter Wagner and Dan Perkins indirectly  
17 marketed and sold shares of WBGI stock by marketing  
18 and selling shares through a non-existent "World  
19 Botanical Gardens Foundation" which was nothing more  
20 than a dba for Defendant Walter Wagner. Through  
21 direct telephone conversations with innocent and  
22 unsuspecting investors, such as John Wallace,  
23 Defendant Dan Perkins stated that he was selling  
24 shares owned by a "World Botanical Gardens  
25 Foundation." However, the marketing materials that  
26 Defendants Walter Wagner and Dan Perkins provided to  
27 these innocent and unsuspecting investors contained  
28 pictures of the Gardens, repeatedly used the name

1 "World Botanical Gardens, Inc." with "wbgi.com" as  
2 part of an email address, was replete with  
3 information about World Botanical Gardens, Inc., and  
4 was designed to lead innocent and unsuspecting  
5 investors to believe that they were purchasing stock  
6 in World Botanical Gardens, Inc., when in fact they  
7 were purchasing nothing of value. Defendant Walter  
8 Wagner then issued certificates of ownership in a  
9 non-existent "World Botanical Gardens Joint Venture  
10 Partnership" through his dba the "World Botanical  
11 Gardens Foundation." Walter Wagner personally  
12 executed checks made out to World Botanical Gardens  
13 Foundation for purchase of those shares and  
14 personally deposited those checks into a bank  
15 account that he owned and controlled. The marketing  
16 materials used by Defendants Walter Wagner and Dan  
17 Perkins and provided to innocent and unsuspecting  
18 investors intentionally misrepresented and omitted  
19 material facts such that potential investors, such  
20 as John Wallace, could not make an informed  
21 investment decision with respect to the shares of  
22 WBGI stock offered for sale by Defendants Walter  
23 Wagner and Dan Perkins. Defendant Dan Perkins  
24 received a commission from Defendant Walter Wagner  
25 for his role in marketing and selling shares in WBGI  
26 by means of the World Botanical Gardens Foundation  
27 to the innocent and unsuspecting investors.

28 8. The marketing materials that Defendants Walter Wagner and

1 Dan Perkins provided to innocent and unsuspecting investors was  
2 knowingly false and knowingly misleading and designed by Defendants  
3 Walter Wagner and Dan Perkins to deceive and defraud these innocent  
4 and unsuspecting investors into believing that Defendants Walter  
5 Wagner and Dan Perkins were associated with and were authorized  
6 representatives of WBGI. By providing false information such as  
7 false phone numbers and addresses, Defendants Walter Wagner and Dan  
8 Perkins, deprived investors, such as John Wallace of the ability to  
9 confirm the false representations and statements made by Defendants  
10 Walter Wagner and Dan Perkins. The Court finds that this type of  
11 intentional deception is characteristic of all of the improper and  
12 fraudulent share sales by Defendants Walter Wagner and Dan Perkins.

13 9. Defendants Walter Wagner and Dan Perkins have taken no  
14 steps to assure that investors, such as John Wallace, would receive  
15 legitimate WBGI shares.

16 10. Defendants Walter Wagner's and Dan Perkins's use of World  
17 Botanical Gardens Foundation to market and sell shares in WBGI  
18 after October 22, 2005 was knowingly and intentionally and  
19 illegally designed to circumvent this Court's Order of Preliminary  
20 Injunction and Order for Permanent Injunction.

21 11. Defendants Walter Wagner's and Dan Perkins's sale of  
22 shares in WBGI after October 22, 2005 was with the knowledge that  
23 it violated this Court's Order for Preliminary Injunction and Order  
24 for Permanent Injunction and was intentionally fraudulent.

25 12. Each sale by Defendants Walter Wagner and Dan Perkins of  
26 an interest of whatever nature in World Botanical Gardens, Inc.  
27 after October 22, 2005 constitutes a separate willful direct  
28 contempt of this Court's Order for Preliminary Injunction.



1       13. After repeated questioning by this Court and counsel,  
2 Defendants Walter Wagner and Dan Perkins, shockingly, were unable  
3 to state how many shares of stock they had sold, unable to state to  
4 whom they had sold stock, were unable to state the purchase price  
5 they had received for the stock they had sold, and were unable to  
6 account for the disposition of funds received from innocent and  
7 unsuspecting victims.

8       14. At this time, the Court is unable to determine the full  
9 extent of the improper and fraudulent share sales of Defendants  
10 Walter Wagner and Dan Perkins. It appears from the evidence before  
11 the Court that the improper and fraudulent share sales reach back  
12 as early as July 2004, and possibly earlier.

13       15. The blatant disregard by Defendants Walter Wagner and Dan  
14 Perkins of the interests of innocent and unsuspecting victims, the  
15 numbers of these illegal transactions, the length of time over  
16 which they occurred, the repetitive nature to these transactions  
17 demonstrating a long-standing pattern of misconduct, the clearly  
18 fraudulent nature of these transactions, and the severely negative  
19 impact these and related activities have had on the ability of  
20 WBGI, a small business with less than \$450,000 in annual revenues,  
21 to obtain badly needed capital by depriving WBGI of the ability to  
22 raise capital from its prospective investor list demand that this  
23 Court use its equitable powers to address and stop these long-  
24 standing patterns of misconduct of Defendants Walter Wagner and Dan  
25 Perkins, to protect innocent investors, to make WBGI whole, and to  
26 deprive Defendants Walter Wagner and Dan Perkins the benefits of  
27 their misconduct.

28       16. Defendant Walter Wagner has also interfered with WBGI's



1 business by placing a lis pendens on WBGI's property and also  
2 placing a lis pendens on property sold by WBGI to Dr. Lanny Neel.

3 17. Defendant Walter Wagner has not provided any evidence or  
4 testimony which suggests that he has any right, title, or interest  
5 in either of those properties.

6 CONCLUSIONS OF LAW

7 1. Defendants Walter Wagner and Dan Perkins are in willful  
8 and direct contempt of this Court's Order for Preliminary  
9 Injunction and Order for Permanent Injunction under NRS Chapter 22  
10 and the equitable authority of this Court to enforce its orders.

11 ORDER OF CONTEMPT

12 IT IS HEREBY ORDERED that Defendants Walter Wagner and Dan  
13 Perkins, no later than Tuesday, October 31, 2006, by 5:00 p.m.  
14 serve on WBGI's counsel and file with this Court a full and  
15 complete accounting of all shares sold of any stock or any interest  
16 of any nature whatsoever in World Botanical Gardens, Inc. without  
17 the express written permission of the WBGI Board of Directors from  
18 January 1, 2004, forward. This accounting must include copies of  
19 all share purchase agreements, marketing materials, certificates of  
20 ownership, all checks or monies received from persons or on behalf  
21 of such persons purchasing such interest, complete bank records of  
22 any deposit in which such checks or monies were placed and the  
23 account holder, and the records, including copies of cancelled  
24 checks, reflecting the disposition of each such check or monies.

25 Defendants Walter Wagner and Dan Perkins shall, under oath,  
26 advise the Court whether they have engaged in improper share sales  
27 prior to January 1, 2004. For all improper share sales, Defendants  
28 Walter Wagner and Dan Perkins shall make a complete accounting. For

1 this purpose an "improper share sale" is any purported transfer of  
2 an interest in WBGI by any defendant without the permission of  
3 WBGI's Board.

4 Within 30 days of receipt of this information, WBGI, through  
5 its counsel, shall advise the Court which of these shares were  
6 proper share sales and which share sales were improper. WBGI shall  
7 also advise the Court which improper share sales by Defendants it  
8 has recognized and issued share certificates to investors, and  
9 which share sales it has not so recognized.

10 IT IS HEREBY FURTHER ORDERED that because neither Defendant  
11 Walter Wagner nor Defendant Dan Perkins was able to reveal the  
12 total number persons to whom they sold an interest in WBGI, this  
13 Court will determine the appropriate contempt penalty after  
14 Defendants Walter Wagner and Dan Perkins provide this Court with a  
15 full accounting described in the preceding portion of this Order of  
16 Contempt.

17 IT IS FURTHER ORDERED that this Court imposes as an equitable  
18 remedy to protect innocent third-parties, a constructive trust on  
19 all proceeds that Defendants Walter Wagner and Dan Perkins  
20 collected from the sale proceeds wherever located of any improper  
21 ~~sales of any interest in WBGI of whatever nature from January 1,~~  
22 2004, forward. No later than November 11, 2006, Defendants Walter  
23 Wagner and Dan Perkins shall pay to WBGI and its counsel of record  
24 in cash or certified funds all proceeds in the constructive trust.  
25 For those persons WBGI has not already recognized as shareholders,  
26 WBGI shall issue to the purchasing party of shares of stock  
27 representing the interest that the purchasing party acquired (or  
28 thought he or she was acquiring) from Defendant Walter Wagner

1 and/or his dba, World Botanical Gardens Foundation. WBGI shall also  
2 reduce the number of shares owned by Defendant Wagner and/or his  
3 dba, World Botanical Gardens Foundation by the number of improper  
4 share sales from January 1, 2004 to date.

5 IT IS FURTHER ORDERED that Defendant Walter Wagner is hereby  
6 restrained and enjoined, unless he receives advance written  
7 approval of WBGI's Board of Directors, from entering upon or being  
8 within 90 feet of the property known as the World Botanical  
9 Gardens.

10 IT IS FURTHER ORDERED that Defendant Walter Wagner is in  
11 contempt of court for using the suffix "wbgi.com" in his email  
12 address.

13 IT IS FURTHER ORDERED that Defendants Walter Wagner and Dan  
14 Perkins are in contempt of court for using the words "World  
15 Botanical Gardens," "World Botanical Gardens, Inc," and "WBGI" in  
16 their marketing materials, letters to their victims, unauthorized  
17 share certificates, business cards, emails, and on other  
18 publications.

19 IT IS FURTHER ORDERED that Defendant Walter Wagner extinguish  
20 the lis pendens placed on WBGI's property and the lis pendens  
21 placed on property sold by WBGI to Dr. Lanny Neel.

22 IT IS FURTHER ORDERED that Defendants Walter Wagner and Dan  
23 Perkins are in contempt of court for their respective failures to  
24 comply with WBGI's Requests for Production of Documents by not  
25 responding to them or producing any documents whatsoever through  
26 them.

27 IT IS FURTHER ORDERED that the Court shall be notified by  
28 counsel within 24 hours of any violation of this Order of Contempt

1 or the Permanent Injunctions against Defendants Walter Wagner and  
2 Dan Perkins, however slight.

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DATED: October 4, 2006

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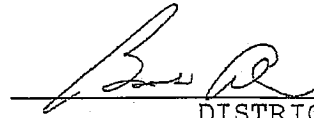
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DISTRICT JUDGE

CERTIFICATE OF SERVICE BY MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 5th day of October, 2006, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

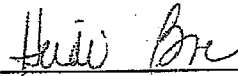
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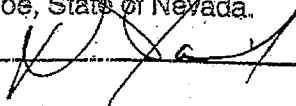
**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE:

OCT 09 2006

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By  Deputy